

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 14 -10

ECONOCARIBE CONSOLIDATORS, INC.

COMPLAINANT

V.

AMOY INTERNATIONAL, LLC.

RESPONDENT

**RESPONDENT'S OPPOSITION TO MOTION TO COMPEL
DISCOVERY**

1. INTRODUCTION

Econocaribe Consolidators, Inc. ("Econocaribe") has moved this Court to compel the production of personnel files belonging to former Amoy International, LLC ("Amoy") employees Krystal Lee and Gaby, also known as Gabrielle Reynolds. Although it initially requested in discovery the **entire** personnel files of both former employees, including any reprimand or disciplinary actions, see

page 4 of Exhibit A to Motion to Compel Discovery, Econocaribe appears, in its Motion, to have narrowed its request “to disciplinary actions, admission after incidents of misdeclaration, involvement in prior litigation, etc.” See Motion, **RELIEF SOUGHT**. If that is the scope of the request and is limited to the shipment of the four containers in this litigation, Amoy has no objection, based on an Order from this Court, to providing that information as to the personnel files of Krystal Lee. However, Amoy objects to the disclosure of any personnel information from Gabrielle Reynolds’ file as a fishing expedition.

2. **AMOY’S RESPONSE TO THE REQUEST FOR PRODUCTION OF PERSONNEL RECORDS OF ITS FORMER EMPLOYEES.**

“Under California law, the California Constitution provides citizens of this State with an inalienable right to privacy. Under federal law, a right to privacy is also guaranteed by the U.S. Constitution. [Citations.] Federal courts expressly recognize a constitutional-based right to privacy that can be raised in response to discovery. [Citation.] An employee’s personnel records and employment information are protected by the constitutional right to privacy. [Citations.] The records sought by Defendant include private financial information in the form of payroll records, pay packages, and wage rates, as well as private employment

information regarding discipline, warnings and reasons for termination. Contrary to Defendant's assertion that no case law supports a privacy finding, these items have all been found to be within a individuals privacy rights." Bickley v. Schneider National, Inc., 2011 WL 1344195 (N.D. Cal. 2011), at *2. Thus, Bickley confirms that an employee's personnel records are subject to a constitutional right of privacy and are protected from disclosure.

The relief sought by Econocaribe is confusing and ambiguous. Although it states, on the one hand, that "[t]he requested information is narrowly tailored to information courts usually allow disclosure, such as disciplinary actions, admission after incidents of misdeclaration, involvement in prior litigation, etc.", it appears, nevertheless, to also demand the production of the personnel files of Amoy's former employees without limitation. See Motion, **RELIEF SOUGHT**.

Seeking the complete employment file of an employee is overbroad on its face and a basis for denying its production. Cf. Singletary v. Sterling Transport Company, Inc., 289 F.R.D. 237, 241, 242 (E.D. Va. 2012), and decisions cited therein. "Furthermore, its has been recognized that personnel files, even of a party's agent, may contain information that is both private and irrelevant to the

case, and that special care must be taken before personnel files are turned over to an adverse party. [Citation.] In such situations, discovery may be denied or it may be narrowly tailored to meet the needs of the case, balanced against the reasonable expectations of privacy of the subject party.” Professional Recovery Services, Inc. v. General Electric Capital Corporation, et al., 2009 WL 137326 (D. N.J. 2009) at *4.

In Krystal Lee’s case, if the Court is inclined to allow the production of some records from her personnel file, the Court’s order should be “narrowly tailored,” as Econocaribe appears to suggest, to “disciplinary actions, admission after incidents of misdeclaration and involvement in prior litigation”, but only as to the shipment of the four containers in this action. However, the Court’s decision should not be based on Exhibit I to the motion. As Ms. Chen of Amoy states in her declaration, only one page of that Exhibit, which is Exhibit 1 to her declaration, is based on information that was provided by Amoy in order to find a buyer for the tires. She denies furnishing information as to the other pages, since Amoy has never been involved in the sale of used tires, other than its attempt to find a buyer for the four containers.

Econocaribe's justification for the personnel records of Gabrielle Reynolds is based upon its suspicion that she might have knowledge as to the nature of the cargo. See MOTION, Argument II. A request based on a suspicion, without more, can only be viewed as "fishing expedition." "No party has the right to conduct a general fishing expedition into the personnel records of another." Maharaj v. Geico Casualty Company, 289 F.R.D. 666, 673 (S.D. Fla. 2013). Here the personnel records being sought are not those of a party, but a former employee of a party. Econocaribe's justification for the production of Gabrielle Reynolds' personnel file doesn't outweigh her right to privacy and does not warrant the production of that file.

3. CONCLUSION

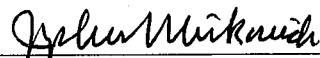
In view of the foregoing, Amoy requests that this Court deny Econocaribe's Motion to Compel Discovery as infringing on the privacy rights of Krystal Lee and Gabrielle Reynolds. If the Court is inclined to order the production of personnel records, Amoy requests the Court to "narrowly tailor" its order to "disciplinary actions, admission after incidents of misdeclaration and

involvement in prior litigation”, but only as to the shipment of the four containers in this action.

Dated: February 17, 2015

Respectfully submitted,
RUSSELL, MIRKOVICH & MORROW

By:



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **RESPONDENT'S**
OPPOSITION TO MOTION TO COMPEL DISCOVERY was sent to the
below-mentioned counsel via email on February 17, 2015.

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